

Case Summary

Appellant-Defendant Nichole Higgins (“Higgins”) appeals the sentences imposed following her pleas of guilty to Fraud on a Financial Institution, a Class C felony,¹ and Theft, a Class D felony.² We affirm.

Issues

Higgins presents two issues for review:

- I. Whether the trial court abused its discretion in failing to find an appropriate mitigating circumstance and in aggravating the sentences to convey a personal message regarding drug abuse; and
- II. Whether the sentences are inappropriate.

Facts and Procedural History

Higgins obtained the personal identification data of a woman named Benita Dixon. Using that data, Higgins impersonated Dixon and opened a checking account at Forum Credit Union. Higgins made purported deposits and withdrawals, and ultimately caused a loss of \$2,000.00 to Forum Credit Union.

On April 23, 2007, the State charged Higgins with three counts of fraud on a financial institution, two counts of theft, five counts of forgery, and three counts of identity deception.

The State and Higgins entered into a plea agreement whereby Higgins was to plead guilty to one count of fraud on a financial institution and one count of theft, and the State was to forego prosecution of the other charges. The State also agreed to forego a habitual offender

¹ Ind. Code § 35-43-5-8.

² Ind. Code § 35-43-4-2.

allegation. The sentences imposed were to be concurrent; otherwise, sentencing was left to the discretion of the trial court.

On October 3, 2007, the trial court sentenced Higgins to seven years imprisonment for fraud on a financial institution and two years imprisonment for theft, to be served concurrently. Higgins now appeals.

Discussion and Decision

I. Abuse of Discretion

In its sentencing statement, the trial court found that Higgins' decision to plead guilty was a mitigating circumstance. Higgins contends that the trial court should also have recognized that undue hardship to her fifteen-year-old son would result from her incarceration.

In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), our Supreme Court determined that trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Id. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. So long as it is within the statutory range, a sentencing decision is subject to review on appeal for an abuse of discretion. Id. One way in which a trial court may abuse its discretion is to fail to enter a sentencing statement at all. Id. Another is to enter a sentencing statement that explains reasons for

imposing a sentence and the record does not support the reasons, the statement omits reasons clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

A trial court is not obligated to find a circumstance to be mitigating merely because it is advanced by the defendant. Felder v. State, 870 N.E.2d 554, 558 (Ind. Ct. App. 2007). On appeal, the defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record. Id.

In particular, a trial court is not required to find that a defendant's incarceration would result in undue hardship on his or her dependents. Roney v. State, 872 N.E.2d 192, 204 (Ind. Ct. App. 2007), trans. denied. Many persons convicted of crimes have children and, absent special circumstances showing that the hardship to the children is "undue," a trial court does not abuse its discretion by not finding this to be a mitigating factor. Id. At her sentencing hearing, Higgins asserted that she had no one to raise her fifteen-year-old son (after his future release from juvenile incarceration) because his father was also in prison. However, the presentence report indicates that Higgins has three sisters in the Indianapolis area. The trial court did not abuse its discretion in not finding undue hardship to be a mitigating factor.

Higgins also claims that the trial court aggravated her sentences to send a personal message about drug abuse. The trial court made a series of comments regarding the trial court's desire to "get [Higgins] away from the dealers, away from the users . . . take [Higgins] out of the streets." (Tr. 40.) Higgins correctly observes that the instant offenses were not drug offenses, and "a trial judge's desire to send a personal philosophical or

political message is not a proper reason to aggravate a sentence.” Nybo v. State, 799 N.E.2d 1146, 1152 (Ind. Ct. App. 2003). However, Higgins had claimed that her addiction to drugs precipitated her crimes, and had asked sentencing leniency on this basis. The trial court’s comments appeared to be a response to Higgins’ request for a community corrections placement. The trial court observed that Higgins needed incarceration as opposed to more lenient rehabilitative efforts, which had consistently failed in the past. We are not persuaded that the trial court aggravated Higgins’ sentences because of her drug addiction or to advance a personal philosophical viewpoint.

II. Appropriateness

A person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years, with the advisory sentence being four years. See Ind. Code § 35-50-2-6. A person who commits a Class D felony shall be imprisoned for a fixed term of between six months and three years, with the advisory sentence being one and one-half years. See Ind. Code § 35-50-2-7.

Higgins requests that we reduce her sentences to the advisory terms in accordance with Indiana Appellate Rule 7(B), which provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” In particular, Higgins emphasizes her role as a single parent, her recent decision to seek drug treatment, and the fact that her offenses were non-violent.

With regard to the nature of the offense, the advisory sentence is the starting point in

our consideration of an appropriate sentence for the crime committed. Childress v. State, 848 N.E.2d 1073, 1081 (Ind. 2006). The nature of the offenses is that Higgins stole another person's identifying information and employed a scheme to defraud a financial institution by impersonating the named person, opening a checking account, and making unauthorized transactions. While Higgins asserts that she should be afforded sentencing leniency because her crimes are non-violent, the crimes of defrauding a financial institution and theft, as defined by the Legislature, are not crimes of violence.

As to the character of the offender, Higgins has a lengthy criminal history. She was convicted of Possession of Marijuana in 1990, Criminal Conversion in 1992, Driving without a License in 1995, Forgery and Theft in 1997, Operating while Intoxicated in 1998, and multiple counts of Forgery and Theft in 2000. In 2003, Higgins' probation was revoked after she tested positive for cocaine on four occasions and failed to comply with substance abuse treatment. In 2004, her probation was revoked after she tested positive for cocaine on multiple occasions. Higgins' character is such that she has failed to benefit from prior rehabilitative efforts and continued to use drugs. Higgins apparently has recently sought drug treatment; however, she has historically failed to cooperate with drug testing and drug treatment.

Higgins also decided to plead guilty, which spared the State the expense of a trial. A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and at least partially confirms the mitigating evidence regarding his character. Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). Indiana courts have recognized that a defendant who pleads guilty

deserves to have mitigating weight extended to the guilty plea in return, but it is not automatically a significant mitigating factor. Davis v. State, 851 N.E.2d 1264, 1268 n.5 (Ind. Ct. App. 2006), trans. denied. Here, Higgins already received a significant benefit in exchange for her guilty plea, because several charges were dismissed and the State agreed to forego a habitual offender allegation.

In sum, the nature of the charged offenses is unremarkable. The character of the offender is such that aggravated sentences are appropriate. Higgins received sentences above the advisory terms but less than the maximum terms. She has not persuaded us that her seven-year sentence or two-year concurrent sentence is inappropriate.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.